



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20-210 et seq.
Regulation title	Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries
Action title	Arrestee DNA Regulations
Document preparation date	5/13/04

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation provides guidance to agencies responsible for collecting DNA samples from persons arrested for any violent felony and for certain burglaries as specified in Virginia Code §§ 19.2-310.2:1 and 19.2-310.3:1. The regulation describes when a sample is required, who is responsible for collecting the sample, how the sample is to be collected and labeled, and how to transport the sample to the Division of Forensic Science for analysis. Without this regulation, the law will not be implemented properly and many samples required from arrested persons will not be collected and entered into the DNA Data Bank, leaving open the likelihood that many of these arrestees will be released from custody without being linked to unsolved crimes that they committed.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On May 13, 2004, the Criminal Justice Services Board adopted by unanimous vote the proposed Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 9.1-102 of the Code of Virginia authorizes the Criminal Justice Services Board to adopt regulations “for any provisions of the Code as they relate to the responsibilities of the Division of Forensic Science.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this new regulation is to comply with Code of Virginia §§ 19.2-310.2:1 and 19.2-310.3:1, effective January 1, 2003, that require DNA sampling of persons arrested for all violent felonies and certain burglaries.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

This is a new regulation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

Public safety will be greatly enhanced through use of this regulation. The primary advantage to the public is the opportunity for earlier identification of persons who have committed previously unsolved crimes. DNA Data Bank “hits” will occur between evidence collected at crime scenes and the DNA profiles of persons sampled upon arrest. This swift identification will often

prevent the release from custody of arrestees who have been linked to these unsolved crimes. Additionally, innocent persons will be exonerated and true perpetrators identified through this use of DNA evidence.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes have been made to the regulation since they were published as a proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Det. Lt. Grady T. Woods, Big Stone Gap Police Department	Indicates "this program is a great asset to law enforcement."	No response required.
Dale Muterspaugh, Sheriff, Alleghany County	<p>1. Concerned that "this will put an additional workload on jail staff." Suggests that "the simplest documentation should be implemented."</p> <p>2. Concerned about "cost of additional handling and postage."</p> <p>3. Sees the regulation "as a plus to the apprehension of criminals and deterrence of crime."</p>	<p>1. The use of LIDS will minimize the additional workload on jail staff as DNA samples will only be collected from arrestees who have not previously been sampled. Also, only the information required by statute and necessary to track the final disposition of the arrestee offenses is requested on the submission forms.</p> <p>2. Kits may be mailed or hand-delivered to the nearest regional laboratory. Also, if the arrestee is ultimately convicted of a felony, a \$25 fee will be assessed against the defendant and added to the court costs. One half of the \$25 fee will go to the general fund of the locality where the sample was collected.</p> <p>3. No response required.</p>
F. W. Howard, Jr., Sheriff, New Kent County	Supports the law.	No response required.
Floyd G. Aylor, Superintendent, Central Virginia	Seeks clarification as to who is responsible for collecting the samples on arrest in those cases where the arrestee is	The regulations provide that the samples shall be collected by the agency that is "responsible for booking upon arrest"

Regional Jail	“booked” into a jail for records purposes, but the processing or “booking” upon arrest (fingerprinting, etc.) is handled by the arresting agency. Central Virginia Regional Jail is “not staffed to perform the duties of another agency.”	(fingerprinting, etc.).
Harvey A. Hoyle, Jr., Chief, Town of Boydton Police Department	DNA testing upon arrest for violent felonies and certain burglaries “will be an asset to the community.”	No response required.
Capt. Tiffany Elmore (on behalf of Sheriff Stephen O. Simpson), Loudoun County Sheriff’s Office	The Loudoun County Sheriff’s Office and Adult Detention Center have been participating in the collection of buccal samples and “have not experienced any problems with the program.”	No response required.
Capt. M. E. Young, Norfolk Police Department	The Norfolk Police Department has “no problem with the Norfolk Sheriff’s Department facilitating the harvesting of DNA for violent felony and certain burglary cases as proposed in the regulations.”	No response required.
Calvin L. Johnson, Chief, Dumfries Police Department	“I would encourage all law enforcement agencies to participate in any way possible to support DNA testing for all investigations where it is deemed necessary as a tool for conviction.”	No response required.
Colonel Richard Schurman, Chief, Colonial Heights Police Department	Indicates the regulation is cost prohibitive because his agency has no way to check LIDS and was advised it would cost between \$100-\$200 per month for access. “If you can obtain the LIDS connection as a matter of this regulation at no cost to the police department then what a boon this regulation would be to law enforcement.”	There is no cost to access the internet based LIDS DNA Sample tracking system developed for use with this regulation.
Sgt. Mark Winn, Henry County Sheriff’s Office	Supports the regulation. Indicates it “is a tremendous shot in the arm for law enforcement throughout the Commonwealth of Virginia.”	No response required.
A. M. Jacobs, Jr., Chief, Virginia Beach Police Department	Supports the proposed regulation. “Since the passage of 19.2-310.2:1 of the Code of Virginia, we have found the procedures used by DFS to be both effective and efficient.”	No response required.
Colonel W. S. Flaherty, Superintendent, Virginia State Police	“[T]he regulations are in line with the Code of Virginia and the intent of the Virginia General Assembly. We find no impediments to their implementation.”	No response required.
Charlie Ray Fox, Jr., Sheriff, Fauquier County Sheriff’s Office	The procedure outlined in the regulations “is less labor intense and less intrusive for the persons submitting samples. This procedure has also afforded us with the	No response required.

	ability to immediately identify whether or not there is a potential for duplicate submissions, thereby reducing workload on already taxed staff.”	
Colonel André Parker, Chief, Richmond Police Department	Strongly supports the law. “[I]t has been a valuable tool in the identification and subsequent arrest of offenders. Of the [first] 79-arrestee hits in Virginia, 15 of those were for Richmond offenses. Of those 15, four were for murders within our City. Of those four, two arrests were made, and two investigatory leads were obtained. There were five arrestee hits in rape cases from within our City. Of those five, three arrests have been made, one warrant is pending and one investigation has been reopened.”	No response required.
Colonel Karen Bowden, Undersheriff, Hampton Sheriff’s Office	“[T]he Hampton Sheriff’s Office has no comments or recommendations.”	No response required.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

This is a new regulation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The taking of DNA samples from persons upon arrest does not have a family impact.